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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MISHIANAND LAVA MACK,

Defendant and Appellant.

B231614

(Los Angeles County
Super. Ct. No. BA369176)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Gail Ruderman Feuer, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General, Stephanie A.
Miyoshi and Daniel C. Chang, Deputy Attorneys General, for Plaintiff and
Respondent.

Appellant Mishianand Lava Mack challenges her convictions for obtaining aid by misrepresentation, grand theft, and perjury by false application for aid. She contends the prosecution failed to prove that the applicable statute of limitations had not run; in addition, in connection with her convictions for obtaining aid by misrepresentation and grand theft, she contends the prosecution proved no material misrepresentation. We reject these contentions and affirm.

RELEVANT PROCEDURAL BACKGROUND

On February 14, 2011, a nine-count amended information was filed, charging appellant with offenses involving aid from the Los Angeles County Department of Public Social Services (DPSS), the California Department of Health Care Services, and the California Department of Education. The information alleged that between March 1, 2001, and June 30, 2004, appellant obtained aid from the DPSS and the Department of Health Care Services by misrepresentation (Welf. & Inst. Code, §10980, subd. (c)(2); count 1); that between July 1, 2004, and March 31, 2007, appellant engaged in grand theft by taking personal property (in the form of child care benefits) belonging to the Department of Education (Pen. Code, § 487, subd. (a); count 2); and that on specified dates between March 12, 2001, and February 6, 2007, appellant engaged in perjury by false application for aid (Pen. Code, § 118, subd. (a); counts 3 through 9).

For purposes of the applicable statute of limitations (Pen. Code, § 803, subd. (c)), the information alleged that the offenses were not discovered until December 5, 2007, and that the statute of limitations was tolled from October 20, 2008 to January 11, 2010, while appellant was subject to prosecution for the same conduct in another action.¹ Moreover, in connection with the charges of aid by

¹ Further statutory citations are to the Penal Code unless otherwise indicated.

misrepresentation and grand theft (counts 1 and 2), the information alleged that appellant took property valued at more than \$65,000 (§ 12022.6 (a)(1)). Appellant pleaded not guilty and denied the special allegations.

A jury found appellant guilty on all counts, with the exception of three counts of perjury by false application for aid (counts 3, 8, and 9), regarding which the jury found appellant not guilty. The jury also found the special allegations to be true with respect to the counts on which it rendered a verdict of guilty. The trial court suspended the imposition of sentence, placed appellant on five years of formal probation, and ordered her to served 180 days in jail and perform 300 hours of community service. In addition, the court ordered appellant to pay victim restitution in an amount to be determined at a later hearing (§ 1202.4, subd. (f)).

FACTS

A. Prosecution Evidence

1. Background

DPSS offers aid and benefits solely to residents of Los Angeles County. Crystal Stairs, Inc. (Crystal Stairs) is one of 13 “shelter agencies” within Los Angeles County that operate under contract with DPSS and the California Department of Education. It is a nonprofit organization that administers child care funds within a defined area of Los Angeles County.

Crystal Stairs assesses an applicant’s eligibility for child care funds under specified criteria. Applicants must reside within Los Angeles County. Generally, applicants must also show that they are entitled to so-called “Calworks” benefits, that they are working or going to school, and that they have a child less than 13 years old. Although applicants may select their child care providers, Crystal Stairs ordinarily requires providers to be located within its service area. However, in some situations, Crystal Stairs supplies funds for a provider outside its service area

until the agency responsible for the provider's location funds the provider's services.

To obtain child care funds through Crystal Stairs, applicants must supply an address and contact phone numbers, which permit Crystal Stairs to confirm the applicant's eligibility for benefits under the DPSS case number through a computer database. In requesting funds, the applicant declares under penalty of perjury that the information he or she has supplied is true.

Appellant is the mother of three children born between June 1999 and October 2004. Beginning in April 1999, appellant submitted applications and supporting documents for cash aid, food stamps, and other assistance to DPSS. Under penalty of perjury, appellant identified her address as 743 East 93rd Street in Los Angeles (the Los Angeles residence). In July 2000, appellant told DPSS that she had moved to San Bernardino. DPSS terminated her benefits and informed her that she must re-apply for them in San Bernardino County.

2. Appellant's Offenses

The prosecution submitted evidence that appellant lived continuously outside Los Angeles County after July 2000, yet received aid and child care benefits through DPSS and Crystal Stairs by misrepresenting that she lived at the Los Angeles residence. According to the prosecution's showing, in September 2000, appellant applied for aid in San Bernardino County, and identified an apartment in San Bernardino as her address. The San Bernardino County social services agency terminated appellant's benefits at the end of 2000. In November 2001, appellant subleased a different apartment in the same apartment complex. In June 2002, appellant signed a lease for the apartment, and renewed it until June 2004, when she leased an apartment in Rialto, which is also in San Bernardino

County. In August 2005, appellant renewed the Rialto apartment lease for a period ending in December 2005.

On March 12, 2001, appellant applied to DPSS for cash aid, food stamps, and other assistance, and stated under penalty of perjury that her address was the Los Angeles residence, which she identified as her grandmother's home. Lori Bernard, a DPSS eligibility worker, relied on the documents in authorizing aid for appellant.

Later, on October 25, 2002, appellant applied to Crystal Stairs for child care benefits. In executing a child care services agreement, she stated under penalty of perjury that her address was the Los Angeles residence. Crystal Stairs approved her application and provided child care benefits. With brief interruptions, appellant received child care benefits and other aid until early 2007. After August 2004, when appellant exhausted her "stage 1" child care benefits funded by DPSS, she began receiving "stage 3" child care benefits, which are funded by the Department of Education.

While appellant received the child care, she repeatedly affirmed under penalty of perjury that she resided in Los Angeles County. On June 6, 2003, and May 3, 2004, appellant executed new child care service agreements stating under penalty of perjury that her address was the Los Angeles residence. On February 14, 2005, in executing a certificate of eligibility for child care benefits, appellant again stated under penalty of perjury that her address was the Los Angeles residence. On February 27, 2006, and February 6, 2007, appellant executed similar certificates of eligibility containing the same address.

On June 21 or 23, 2007, Walter Santana, a DPSS welfare fraud investigator, received a request for a fraud inquiry from Crystal Stairs. The request expressed a suspicion that appellant had misrepresented her employment information while receiving child care services; it also identified some of her child care providers.

On December 5 or 6, 2007, after Santana reviewed appellant's records and visited the locations of her employers and child care providers, he obtained copies of appellant's leases for the San Bernardino and Rialto apartments through a search warrant. According to Santana, he first concluded that appellant had misrepresented her address as the Los Angeles address when she secured the leases for the San Bernardino apartments.

B. Defense Evidence

Appellant presented no evidence.

DISCUSSION

Appellant contends (1) that the prosecution of several charges of which she was convicted was time-barred, and (2) that her convictions for welfare fraud and grand theft fail in whole or in part for want of proof of a material misrepresentation. As explained below, we reject these contentions.

A. Timeliness of Action

Appellant contends that the underlying action was not commenced within the limitations period applicable to the offenses of which she was convicted, with the exception of a single perjury conviction (count 7). We disagree.

Section 801.5 provides that the prosecution of the offenses charged against appellant "shall be commenced within four years after discovery of the commission of the offense." This four-year limitations period is subject to two qualifications pertinent here. First, an interval of time during which another action is pending against the defendant for the same offenses is not attributed to the four-year limitations period. (§ 803, subd. (b).) Second, the four-year limitations period "does not commence to run until the discovery of [the] offense." (§ 803,

subd. (c).) Although the Penal Code does not specify whose discovery of the offense triggers the limitations period, “case law holds that the limitations period begins running on the date either the ‘victim’ or responsible ‘law enforcement personnel’ learn of facts which, if investigated with reasonable diligence, would make that person aware a crime had occurred.” (*People v. Moore* (2009) 176 Cal.App.4th 687, 692 (*Moore*), quoting *People v. Kronemyer* (1987) 189 Cal.App.3d 314, 330-331, italics deleted.) Under this principle, the crucial determination is not the date on which the crime was actually discovered, but the date on which “law enforcement authorities or the victim had actual notice of circumstances sufficient to make them suspicious of [the offense,] thereby leading them to make inquiries which might have revealed the [offense].” (*People v. Zamora* (1976) 18 Cal.3d 538, 571-572, italics omitted; *People v. Wong* (2010) 186 Cal.App.4th 1433, 1444-1445.)

At trial, the prosecution had the burden of showing by a preponderance of the evidence that the charged offenses were committed within the limitations period. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 248.) Under the jury instructions, the jury was informed that the action was timely only if appellant’s crimes were discovered, or should have been discovered, no more than 1910 days prior to the action’s commencement on March 24, 2010. This time calculation included an interval of 449 days, during which the four-year limitations period (which spans 1461 days) was tolled due to another action pending against appellant for the same crimes. During the closing arguments, the prosecutor stated that the prosecution of a crime charged against appellant was time-barred if the completed crime was discovered, or should have been discovered, before December 31, 2004. All the crimes of which appellant was convicted occurred on or before March 31, 2007. We review the jury’s findings regarding the action’s timeliness for the

existence of substantial evidence. (*People v. Wong, supra*, 186 Cal.App.4th at p. 1444.)

The evidence at trial supports the reasonable inference that no victim or law enforcement official knew or should have known of appellant's crimes until June 2007, when Crystal Stairs referred its suspicions of fraud to DPSS welfare fraud investigator Santana. This is because Crystal Stairs is properly excluded as a victim for purposes of determining the triggering of the four-year limitations period. Generally, "in cases involving fiscal crimes against government, a victim for purposes of the [four-year limitations period] is a public employee occupying a supervisory position who has the responsibility to oversee the fiscal affairs of the governmental entity and thus has a legal duty to report a suspected crime to law enforcement authorities." (*People v. Lopez, supra*, 52 Cal.App.4th at pp. 247-248.)

In *Moore*, which involved the grand theft of DPSS child care benefits provided through Crystal Stairs, the appellate court held that for purposes of the limitations period, Crystal Stairs was not a victim of the theft because it acted merely as "a third party disbursing contractor" for DPSS. (*Moore, supra*, 176 Cal.App.4th at p. 694.) The court concluded that Crystal Stairs did not own the funds that DPSS provided for child care, had no responsibility over DPSS's fiscal affairs, and lacked any legal duty to report suspected crime to law enforcement authorities. (*Id.* at pp. 694-695.) In view of *Moore*, the potential victims of appellant's crimes were limited to DPSS, the California Department of Health Care Services, and the California Department of Education, which provided the funds for the benefits appellant received. As Crystal Stairs first alerted DPSS of potential fraud in June 2007, the jury reasonably found that none of the charges against appellant was time-barred.

Appellant maintains that DPSS had adequate notice of potential fraud as early as mid-2001, when Crystal Stairs asked DPSS whether appellant was eligible

for child care benefits paid to a provider in San Bernardino County. On this matter, the record establishes that in June 2001, a Crystal Stairs employee called the DPSS child care hotline to inquire whether appellant was entitled to benefits for a provider located in San Bernardino County.² DPSS approved the benefits after reviewing appellant's eligibility because she was "on cash aid" and was "still in L[os] A[ngeles] County." Later, in September 2002, Crystal Stairs asked appellant to arrange for child care benefits through Pomona Unified, another shelter agency that operates within the area of Los Angeles County closest to San Bernardino County. Crystal Stairs referred appellant's application for child care benefits to Pomona Unified and the San Bernardino County social services agency, both of which refused to provide benefits. In October 2002, after Crystal Stairs consulted DPSS through the hotline, DPSS determined that Crystal Stairs should continue to disburse benefits to appellant.

Pointing to the hotline calls and DPSS's contemporaneous knowledge that appellant worked in San Bernardino County, appellant argues that DPSS was "in possession of all the facts that would prompt a diligent person to make further inquiry" whether she lived in Los Angeles County. This argument misapprehends our review for substantial evidence. We do not engage in independent factfinding, but instead affirm the jury's determinations if they are supported by any logical inferences grounded in the evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11-14.) Crystal Stairs's hotline calls to DPSS never questioned appellant's repeated representations that she lived in Los Angeles County and worked in San Bernardino County, but merely sought guidance from DPSS regarding whether she was entitled to DPSS child care benefits for a provider located in San Bernardino

² According to Crystal Stairs fraud prevention specialist Gloria Torres, the DPSS operated the hotline to permit Calworks participants and shelter agencies to resolve child care issues.

County and, if so, whether Crystal Stairs was the appropriate shelter agency within Los Angeles County to disburse the benefits.³ Accordingly, the jury reasonably concluded that the calls triggered no inquiry into whether appellant had misrepresented her residence.

For the first time on appeal, appellant contends in her reply brief that *Moore* was wrongly decided and that Crystal Stairs was a victim of her crimes. Her argument relies on subdivision (a)(1) of section 424, which establishes a felony offense for public officers and “every other person charged with the receipt, safekeeping, transfer, or disbursement of public money[] who . . . without authority of law, appropriates the same . . . to his or her own use, or to the use of another.” Appellant maintains this statute rendered Crystal Stairs a victim of appellant’s offenses because it obliged Crystal Stairs to report suspected child care benefit fraud to law enforcement authorities.

Appellant has forfeited this contention by failing to raise it in her opening brief. (*People v. Senior* (1995) 33 Cal.App.4th 531, 537.) However, we would reject it were we to consider it on the merits. Although subdivision (a)(1) of section 424 requires Crystal Stairs to disburse funds in accordance with the “authority of law,” the statute imposes no express obligation on Crystal Stairs to report suspected fraud to law enforcement authorities. As our Supreme Court has explained, criminal conduct under the statute is determined by reference to the “authorizing law,” which is extraneous to the statute. (*Stark v. Superior Court* (2011) 52 Cal.4th 368, 397, italics deleted.) Thus, “[I]ability under section 424 arises when the officer or custodian, bound by these authorizing laws, acts without authority” (*Ibid.*) As appellant acknowledges, the evidence establishes only

³ Although appellant’s briefs repeatedly state that in October 2002, Crystal Stairs told DPSS that it did not believe that appellant lived in Los Angeles County, the portions of the record that appellant cites do not support this assertion.

that Crystal Stairs refers instances of suspected fraud to DPSS for a full investigation. We therefore see no error in *Moore*. In sum, the action against appellant was not time-barred.

B. Material Misrepresentations

Appellant next contends that her convictions for welfare fraud (Welf. & Inst. Code, § 10980, subd. (c)(2); count 1) and grand theft by false pretenses (Pen. Code, § 487, subd. (a); count 2) fail -- in whole or in part -- for want of proof of a material misrepresentation. These convictions rest on allegations that appellant improperly obtained aid from the DPSS, the Department of Health Care Services, and the Department of Education by misrepresenting her county of residence. She argues that because an applicant's county of residence does not determine the applicant's eligibility for benefits funded by the Department of Health Care Services and the Department of Education, her misrepresentations did not concern a fact material to such state benefits. She thus maintains that her convictions fail to the extent they concern her receipt of state benefits. She is mistaken.

We begin with appellant's conviction for welfare fraud. Underlying this conviction was the allegation that between March 1, 2001, and June 30, 2004, appellant obtained aid from the DPSS and the Department of Health Care Services by misrepresentation. Subdivision (c) of the Welfare and Institutions Code section 10980 provides for criminal punishment "[w]hensoever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation . . . obtained or retained aid . . . for himself or herself or for a child not in fact entitled thereto" Nonentitlement to the aid obtained or received is thus an element of the crime of welfare fraud. (*People v. Ochoa* (1991) 231 Cal.App.3d 1413, 1420.)

Appellant maintains that the prosecution failed to show that she was not entitled to the aid she received funded by the Department of Health Care Services and other state sources, pointing to Welfare and Institutions Code section 11102, which provides: “County residence is not a qualification for aid under any public assistance program.”⁴ She thus argues her false statements regarding her address were irrelevant to her entitlement to state benefits. We disagree. Generally, statutes must be interpreted in context, with an eye to the goals of the pertinent statutory scheme. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387, 1390-1391.) As explained below, although residence in any particular county is not -- in itself -- a qualification for state benefits, the statutory scheme containing Welfare and Institutions Code section 11102 renders county residence a material fact regarding an individual’s entitlement to receive state benefits through a county agency such as DPSS.

Welfare and Institutions Code section 11102 falls within a statutory scheme intended to achieve several goals, including the orderly distribution of state benefits provided by the Department of Health Care Services and other state agencies. Subdivision (a)(1) of Welfare and Institutes Code section 10200 directs the Department of Health Care Services and other state agencies to “develop a statewide eligibility and enrollment determination process.” Welfare and Institutions Code section 11102 further provides: “(a) The county where the applicant lives shall accept the application and *shall be responsible for paying the aid.* [¶] (b) Responsibility for payment of aid to any person qualifying for and receiving aid from any county, who moves to another county in this state to make his home, shall be transferred to the second county as soon as administratively

⁴ Appellant does not challenge her conviction to the extent that it is predicated on her receipt of “stage 1” child care benefits, which are funded by DPSS.

possible, but not later than the first day of the month following 30 days after notification to the second county.” (Italics added.) These provisions demonstrate the Legislature’s intent to establish a system through which county agencies are obliged to distribute aid only to their residents, unless special circumstances obtain.

We therefore conclude that for purposes of the offense of welfare fraud, individuals are not entitled to receive state benefits through county agencies responsible for counties in which the individuals do not reside, absent the special circumstances. To hold otherwise would erode the system for distributing state benefits the Legislature has created, notwithstanding the fact that the benefits flowing through the county agencies originate with the Department of Health Care Services and other state agencies.

Here, the evidence establishes that appellant had no entitlement to the disbursement through DPSS and Crystal Stairs of the state benefits that she received after March 2001. When appellant moved to San Bernardino County, she applied for aid through San Bernardino County, but the aid was terminated at the end of 2000. She then applied for and received state benefits through DPSS and Crystal Stairs while misrepresenting that she resided in Los Angeles County.

Appellant’s challenge to her conviction for grand theft by false pretenses fails for the same reason. Underlying the conviction was the allegation that on or after July 1, 2004, appellant engaged in grand theft by taking property (in the form of child care benefits) from the Department of Education.⁵ “To support a conviction of theft for obtaining property by false pretenses, it must be shown: (1) that the defendant made a false pretense or representation, (2) that the

⁵ Regarding this allegation, we note that the “stage 3” child care benefits that appellant received after July 2004 were funded by the California Department of Education.

representation was made with intent to defraud the owner of his property, and (3) that the owner was in fact defrauded in that he parted with his property in reliance upon the representation.” (*Perry v. Superior Court* (1962) 57 Cal.2d 276, 282-283.) An owner of funds may be the victim of grand theft of the funds by false pretenses even though only the owner’s agent dealt with the perpetrator. (*People v. Parker* (1965) 235 Cal.App.2d 86, 92.) Because appellant’s false representation regarding her residence was material to her entitlement to state benefits through DPSS and Crystal Stairs, the jury reasonably concluded that the Department of Education “parted with [its] property in reliance upon the representation.” (*Perry v. Superior Court, supra*, at p. 283.)

Appellant’s challenge also fails for another reason. As Witkin and Epstein explain, the offense of grand theft by pretext does not require that the victim experienced a net loss in relying on the perpetrator’s misrepresentation: “If the victim is induced to part with money or property in exchange for other property fraudulently misrepresented, the crime is committed. It is not a defense that something received in exchange was equal in value to the money or property with which the victim parted, or that no permanent loss occurred. The victim is defrauded if he or she did not get that which was bargained for, even though the victim may not have suffered a net financial loss.” (2 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Crimes Against Property, § 61, p. 90.) Thus, the crime is committed when the perpetrator obtains funds from the victim through a misrepresentation, even though the perpetrator may have been able to obtain the funds from the victim through a different course of action lacking the misrepresentation. (See *People v. Conlon* (1962) 207 Cal.App.2d 86, 91-92 [defendants were properly convicted of theft by false pretenses for falsely representing themselves as veterans, orphans, or epileptics in order to sell magazine subscriptions to victims, even though no misrepresentation was made

regarding the price or terms of the subscriptions].) That is the case here. In sum, there is adequate evidence of material misrepresentations sufficient to support appellant's convictions for welfare fraud and grand theft by false pretenses.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.